



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200914071

JAN 07 2009

UIL No. 408.03-00

SE:T:EP:RA:T4

Legend:

Taxpayer A =

Date 1 =

Bank B =

IRA X =

Account Y =

Amount S =

Dear:

This is in response to your letter dated April 15, 2008, supplemented by correspondence dated June 11, 2008, in which you request a waiver of the 60-day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling request.

Taxpayer A, age 60, represents that he received a distribution of Amount S from IRA X. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to bad advice he received from a representative of Bank B, which led to Amount S being placed in a non IRA account, and the failure of Bank B to advise him of the 60-day rollover requirement.

Taxpayer A maintained IRA X with Bank B. Taxpayer A represents that he met with a Financial Specialist at Bank B sometime prior to Date 1 regarding a distribution from IRA X. The Financial Specialist informed him during that meeting that he would

incur a premature distribution penalty if he took a distribution prior to age 59 ½. Taxpayer A represents further that he then waited until Date 1, after attaining age 59 ½, to proceed with the transaction.

On Date 1, Taxpayer A returned to Bank B, met with a Financial Specialist and requested a full distribution of Amount S from IRA X. Taxpayer A represents that on Date 1 he informed the Financial Specialist of his intent to receive a full distribution of Amount S from IRA X, and relocate it to a risk free fund. Taxpayer A represents further that he informed the Financial Specialist that the money was for his retirement, and that the Financial Specialist assisted him with transferring Amount S into Account Y. Taxpayer A asserts that the Financial Specialist did not inform him that the distribution was taxable unless rolled over into another IRA within 60 days, although he represents that the Bank B Financial Specialist suggested he speak to the person who prepares his Income Tax returns regarding the taxability of the transaction.

According to Bank B personnel, however, the Financial Specialist informed Taxpayer A of the tax consequences of taking a full distribution. Moreover, in order to ensure that Taxpayer A understood the tax implications of the transaction, the Financial Specialist referred Taxpayer A to a Spanish speaking Financial Specialist. Taxpayer A was also informed in Spanish that the full amount of the distribution was includible in income for the applicable tax year. Following the discussions with both Financial Specialists, Taxpayer A insisted on taking the distribution, and Amount S was distributed from IRA X and placed in Account Y, a non IRA account.

Statements received by Taxpayer A reflected that the funds were not being held in an IRA and were co-mingled with other funds. Taxpayer A asserts that he learned that the distribution was taxable when he went to have his taxes prepared.

Based on the above facts and representations, you request that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of Amount S from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers. Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the account is maintained if:

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which he receives the payment or distribution; or,

- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the one-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA, which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003), provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country, or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and, (4) the time elapsed since the distribution occurred.

Taxpayer A has not presented any evidence to the Service as to how any of the factors outlined in Rev. Proc. 2003-16 affected his ability to timely rollover Amount S, or any portion thereof to an IRA. Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service declines to waive the 60-day rollover requirement with respect to the distribution of Amount S.

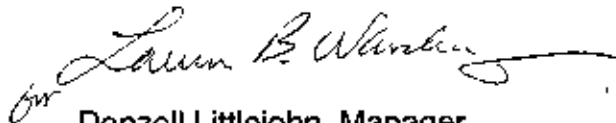
No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling is directed solely to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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If you wish to inquire about this ruling, please contact \*\*\*, SE:T:EP:RA:T4, I.D.  
No. \*\*\*, at( ) \*\*\*.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Donzell Littlejohn", with a long horizontal flourish extending to the right.

Donzell Littlejohn, Manager  
Employee Plans, Technical Group 4

Enclosures:

Deleted Copy of Ruling Letter  
Notice of Intention to Disclose